

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

LARRY E. BROWN, II,

Petitioner,

Case No. 3:20-cv-113

vs.

NORMAN ROBINSON, Warden,
London Correctional Institution,

District Judge Michael J. Newman
Magistrate Judge Michael R. Merz

Respondent.

ORDER AND ENTRY: (1) ADOPTING THE REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE (Doc. No. 64); (2) DENYING WITH PREJUDICE PETITIONER'S MOTION FOR RECONSIDERATION (Doc. No. 63); (3) OVERRULING PETITIONER'S OBJECTION (Doc. No. 65); (4) DENYING A CERTIFICATE OF APPEALABILITY; (5) CERTIFYING THAT ANY APPEAL WOULD BE OBJECTIVELY FRIVOLOUS AND FINDING THAT *IN FORMA PAUPERIS* STATUS SHOULD BE DENIED ON APPEAL; AND (6) CLARIFYING THAT THIS CASE REMAINS TERMINATED ON THE DOCKET

This civil case is before the Court on Petitioner's Fed. R. Civ. P. 59(e) Motion for Reconsideration (Doc. No. 63) of this Court's May 9, 2022 order (Doc. No. 59) and the Report and Recommendation on Petitioner's Motion for Reconsideration (Doc. No. 64) issued by United States Magistrate Judge Michael R. Merz, to whom this case was referred pursuant to 28 U.S.C. § 636(b). Petitioner filed an objection to the Report and Recommendation. Doc. No. 65. As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all filings in this matter, including Petitioner's objections.

Upon careful *de novo* consideration of the foregoing, the Court determines that the Report and Recommendation (Doc. No. 64) should be adopted and that Petitioner's objection (Doc. No.

65) should be overruled. Judge Merz correctly noted that Petitioner's arguments fail to meet the Fed. R. Civ. P. 59(e) standard, considering Petitioner makes the same arguments that this Court already rejected. *See* Doc. No. 64 at PageID 2373–76. Likewise, Petitioner's arguments, as Judge Merz properly found, are forfeited based on the state procedural bar applicable here. *Id.* at PageID 2375. Accordingly, the Court: (1) **ADOPTS** the Report and Recommendation of the Magistrate Judge (Doc. No. 64) in its entirety; (2) **DENIES WITH PREJUDICE** Petitioner's Motion for Reconsideration (Doc. No. 63); (3) **OVERRULES** Petitioner's objection (Doc. No. 65); (4) **DENIES** Petitioner a certificate of appealability; and (5) **CERTIFIES** that any appeal would be objectively frivolous and finds that Petitioner should be denied *in forma pauperis* status on appeal. This case remains **TERMINATED** on the docket.

IT IS SO ORDERED.

Date: June 27, 2022

s/ Michael J. Newman
Hon. Michael J. Newman
United States District Judge